

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GETTY PETROLEUM MARKETING INC.,

08 CV 6176 (JGK)

Plaintiff,

-against-

NEW ATLANTIS ACQUISITION I LLC,
ATLANTIS PETROLEUM, LLC, and FIRST
AMERICAN TITLE INSURANCE
COMPANY,

**NOTICE OF MOTION TO
DISMISS FOR LACK OF
SUBJECT MATTER
JURISDICTION PURSUANT TO
RULE 12(b)(1) OF THE
FEDERAL RULES OF CIVIL
PROCEDURE**

Defendants.

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PLEASE TAKE NOTICE that upon: (1) this Notice of Motion, (2) Affidavit of Jason Tarbart, Senior Vice President, East Coast, BCP Management, Inc., in Support of Motion to Dismiss Complaint; (3) Memorandum of Law in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, and (4) all the prior pleadings and proceedings herein, Defendants New Atlantis Acquisition I LLC and Atlantis Petroleum, LLC, by their counsel, Stevens & Lee, P.C., will move this Court before the Honorable John G. Koeltl, United States District Court for the Southern District of New York, Daniel Patrick Moynihan United States Courthouse, 500 Pearl St., Room 1030, New York, New York, at a time and date convenient for the Court, for an Order granting the moving Defendants motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure to dismiss the Complaint filed by Getty Petroleum Marketing Inc. for lack of subject matter jurisdiction because there is not complete diversity of citizenship between the parties under 28 U.S.C. § 1332, together with such other and further relief as this Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that the moving Defendants respectfully request that oral argument be heard in connection with the instant motion.

Respectfully submitted,

Dated: July 31, 2008

s/ Bradley L. Mitchell

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- and -

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*Attorneys for Defendants
New Atlantis Acquisition I LLC
and Atlantis Petroleum, LLC*

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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
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GETTY PETROLEUM MARKETING INC.,

08 CV 6176 (JGK)

Plaintiff,

-against-

NEW ATLANTIS ACQUISITION I LLC,
ATLANTIS PETROLEUM, LLC, and FIRST
AMERICAN TITLE INSURANCE
COMPANY,

**[PROPOSED] ORDER
GRANTING MOTION TO
DISMISS FOR LACK OF
SUBJECT MATTER
JURISDICTION PURSUANT TO
RULE 12(b)(1) OF THE
FEDERAL RULES OF CIVIL
PROCEDURE**

Defendants.

-----X

Upon consideration of the Motion of Defendants New Atlantis Acquisition I LLC and Atlantis Petroleum, LLC to Dismiss the Complaint filed by Getty Petroleum Marketing Inc. for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure (“Motion”); and any responses thereto; and good cause appearing therefor,

IT IS, on this _____ day of _____, 2008;

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the Complaint filed by Plaintiff Getty Petroleum Marketing Inc. is dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure.

Honorable John G. Koeltl
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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GETTY PETROLEUM MARKETING INC.,

08 CV 6176 (JGK)

Plaintiff,

-against-

**ATTORNEY'S AFFIRMATION
OF SERVICE**

NEW ATLANTIS ACQUISITION I LLC,
ATLANTIS PETROLEUM, LLC, and FIRST
AMERICAN TITLE INSURANCE
COMPANY,

Defendants.

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BRADLEY L. MITCHELL, an attorney admitted to practice in the Southern District of New York and a member of the law firm of Stevens & Lee, counsel for Defendants New Atlantis Acquisition I LLC and Atlantis Petroleum, LLC ("Moving Defendants"), affirms as follows:

1. I am over the age of eighteen years and not a party to this action.
2. That on the 31st day of July, 2008, the Moving Defendants' Notice of Motion to Dismiss for Lack of Subject Matter Jurisdiction Pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, with Proposed Order, was served upon the following counsel of record via the ECF filing system maintained by the Southern District of New York, and via Federal Express next business day delivery, addressed as follows, said address being the last address identified by this counsel in papers filed in connection with this action:

Robert A. Johnson, Esq.
Christopher T. Schulten, Esq.
AKIN GUMP STRAUSS HAUER & FELD LLP
590 Madison Avenue
New York, New York 10022
(212) 872-1000
Attorneys for Plaintiff

Dated: July 31, 2008

s/ Bradley L. Mitchell

Bradley L. Mitchell